IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8416 OF 2005

Raju @ Riyaz Sattar Kotwal ....Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. Shekhar A. Ingawale for the applicant.

Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 31st January, 2006

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 3/7/2005 in connection with an offence which was registered with the Juna Rajwada Police Station, Kolhapur for the offence punishable under section 302 of the Indian Penal Code. It is alleged that the applicant assaulted the deceased on account of dispute for the payment of certain amount. Admitted position is that there are no eye witnesses to the incident and the case of the prosecution rests on circumstantial evidence.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that the applicant also has suffered injuries and, after the incident, he immediately surrendered to the Police. The learned Counsel submitted that the deceased had collected Rs 10 lakhs from various persons on account of chit fund which was carried on by the applicant and the deceased. However, the said amount was misappropriated by the deceased and the applicant had paid that amount out of his own pocket. He submitted that the deceased had come to the residence of the applicant which indicated that he had started the fight and was the aggressor and therefore the possibility of the applicant defending himself cannot be ruled out.

4. The learned APP appearing on behalf of the State, on the other hand, vehemently opposed the said submissions. He submitted that the blood stained clothes and the knife were recovered at the instance of the applicant immediately after the incident and the applicant had surrendered to the police which clearly indicated that he was involved in the said offence. He further submitted that there were number of incised wounds on the person of the deceased which indicated that the applicant had an intention to

murder the deceased and also had knowledge that the injuries which were inflicted by him were sufficient in the ordinary course of nature to cause death. He submitted that, therefore, the applicant was not entitled to be released on bail.

5. I have considered the submissions made by the learned Counsel for the applicant and the learned APP for the State. In the present case, the circumstances indicate that there was an altercation between the applicant and the deceased. Admittedly, there was a dispute between the two over the payment of an amount of Rs 10 lakhs to the members of the chit fund. The applicant also was injured in the said incident. In these circumstances, the possibility of self defence cannot be ruled out. Apart from that, presently, the investigation is over. The charge-sheet has already been filed and, therefore, in my view, the applicant is entitled to be released on bail.

6. The applicant be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. The applicant, however, shall not enter the jurisdiction of Juna Rajwada Police Station till the disposal of the trial. He shall give his new address to the Jail Superintendent and shall report to the

nearest Police Station from his new address twice in a month.

7. Application is accordingly disposed of.

V.M. KANADE, J.